

BEFORE THE TENNESSEE REGULATORY AUTHORITY
NASHVILLE, TENNESSEE

IN RE:

RULEMAKING RELATIVE TO
"INDEPENDENT CONTRACTORS"
ACCESS TO THE DO NOT CALL
REGISTER

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OFFICE OF THE
EXECUTIVE SECRETARY

COMMENTS OF TENNESSEE ASSOCIATION OF REALTORS®

The Tennessee Association of REALTORS® ("TAR") appreciates the opportunity to present comments on the Proposed Revisions to Chapter 1220-4011 regarding Telephone Solicitation Regulations and the Do Not Call Register. In addition to the comments TAR presented on the record during the August 18, 2000 hearing, TAR also would like to suggest the following revisions to the proposed rules:

1. 1220-4-11-.02(7): It is the duty of a principal solicitor to ensure that its independent solicitors that are registered pursuant to Rule 1220-4-11-.04(4) of these rules and that conduct telephone solicitations comply with the regulations of this Chapter.

1220-4-11-.07(2): A principal solicitor is joint and severally liable for violations of this Chapter by its independent solicitors that are registered pursuant to Rule 1220-4-11-.04(4) of these rules.

The following example illustrates our reasons for making this suggestion.

Numerous REALTORS® might qualify as "independent solicitors" with regard to the listings of fellow REALTORS®, and these persons may wish to make telephone solicitation calls to

prospective buyers or sellers regarding the listings. Some of these persons may actually request to be registered as one of the REALTOR®'s independent solicitors, in which case the REALTOR® can evaluate the request, determine if he or she is willing to accept joint and several liability for the actions of that particular person, and either register the person or decline to do so. Other persons may never request to be registered as an independent solicitor and nonetheless make telephone solicitation calls regarding the REALTOR®'s listings.

As noted above, the REALTOR® may elect to pay the \$1,000 registration fee as a principal solicitor, register one or more such persons as independent solicitors, and pay the additional \$50 registration fee for each such independent solicitor. Under those circumstances, we have no objections to the Authority's rules allowing the REALTOR® to share the Register with such independent solicitors under the provisions of Rule 1220-4-11-.04(2), requiring the REALTOR® to ensure that such independent solicitors comply with these Rules, and providing that the REALTOR® is jointly and severally liable for any violations of the rules by such independent solicitors.

On the other hand, TAR is opposed to any rule that would require the REALTOR® to be jointly and severally liable for the actions of a person who makes a telephone solicitation regarding a listing when the REALTOR® has not registered that person as an independent solicitor of the REALTOR®. Having not registered such a person as an independent solicitor and having not provided such a person with a copy of the Register, the REALTOR® should not be liable for the person's actions. Instead, that person should be required to register as a telephone solicitor, and that person should be responsible for his or her own compliance with the Authority's rules.

2. 1220-4-11-.02 is amended by adding the following new subsection:

- (11) "Telephone solicitation" does not include voice communications over telephone to a residential subscriber if:
 - (1) such subscriber is a property owner who is selling property and advertises such sale by means of a sign, newspaper notice or other publication or is a potential purchaser who expresses interest in purchasing property; or
 - (2) such subscriber is a property owner who has listed such property for sale with a REALTOR® and such listing has expired within the prior twelve (12) months.
 - (3) such subscriber is, or was within the prior twelve (12) months, an existing customer or client.

T.C.A. §65-4-401(B)(i) allows communication with permission; signs, advertisements, etc. would be expressing such permission.

Another basis for this proposal is T.C.A. §65-4-401(B)(iv)(c). The business, such as a REALTOR®, has a reasonable belief that the specific person who is receiving the voice communication is considering purchasing the service or product sold or leased by the business and the call is specifically directed to such person. When an owner advertises property for sale, it is a reasonable belief that such person is considering purchasing the services of a REALTOR® and has put such businesses on notice and such person would be inviting telephone calls inquiring about the sale of such property or the potential listing of such property by a REALTOR®.

T.C.A. §65-4-401(B)(iii) defines customer as an existing customer or a customer within the prior 12 months.

3. Amend 1220-4-11-.04 by adding the following new subsection:

- (5) An "entity" shall pay one registration fee of \$500.00 and is permitted to share its copy of the register with any parent, subsidiary or affiliate. "Affiliate" of a specific

person means a person that directly, or indirectly through one (1) or more intermediaries, controls, or is controlled by, or is under control with, the person specified and shall include, but not be limited to separate corporations controlled by common shareholders.

The purpose of this proposal is to clarify T.C.A. §65-4-405(d) which states that a "entity" includes any parent, subsidiary or affiliated person. T.C.A. §48-11-201(1) defines "affiliate" of a specific person as a person that directly, or indirectly through one (1) or more intermediaries, controls or is controlled by, or is under control with, the person specified. REALTORS® and other businesses for tax and other legal considerations are separate corporations, L.L.C.'s, partnerships, etc. but may be owned by the same shareholders or principals. Since these would fit the definitions of both entity under T.C.A. §65-4-405(d) (as amended) and affiliate under T.C.A. §48-11-201(1), this amendment would clarify and prevent possible confusion. Also see Chapter 729 of the Public Acts of 2000, §§ 3 & 4.

4. Amend §1220-4-11-.01 by adding the following to subsection (15)(c):

"Independent Solicitor" does not include an independent contractor, subsidiary, affiliate, or employee who does not make more than three (3) voice communications in any one (1) calendar week.

Authority: T.C.A. §65-4-401(B)(e) and Chapter 729 of the Public Acts of 2000, §3.

It is for these reasons that TAR respectfully requests the Authority to amend the proposed rules as suggested above.

This 1st day of September, 2000.

TENNESSEE ASSOCIATION OF REALTORS®

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